IN THE

Supreme Court of the United States

October Term, 1919

CHARLES E. SMITH,
Appellant,
against
KANSAS CITY TITLE AND TRUST COMPANY, *et al.*,
Appellees.

No. 199

BRIEF ON BEHALF OF FIRST JOINT STOCK LAND BANK OF CHICAGO, INTERVENOR-APPELLEE.

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Ingle, Inc., 165 William Street.

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October Term, 1919

CHARLES E. SMITH, *Appellant,* *against* KANSAS CITY TITLE AND TRUST COMPANY, *et al.,* *Appellees.*	No. 593

BRIEF ON BEHALF OF FIRST JOINT STOCK LAND BANK OF CHICAGO, INTERVENOR-APPELLEE.

Statement.

Appeal from a final decree of the District Court of the United States for the Western Division of the Western District of Missouri, dismissing a bill of complaint for want of equity (Record, p. 30).

This appeal involves the constitutionality of the Federal Farm Loan Act, approved July 17, 1916 (39 Stats., p. 360), as amended by an act approved January 18, 1918 (40 Stats., p. 431), and particularly of Sections 26 and 27 of said Act (39 Stats., p. 380), in so far as they authorize the organization of two classes of banks, viz: Federal Land Banks and Joint Stock Land Banks, the issuance of bonds by them, and the exemption of said bonds from taxation.

The case involves the validity of $626,321 of stock and $150,600,000 of bonds, issued by Federal Land Banks, and $8,000,000 of stock and $41,000,000 of bonds issued by Joint Stock Land Banks, outstanding in the hands of the public, as well as of $8,626,321 of stock and $135,000,000 of bonds issued by Federal Land Banks and held in the United States Treasury.

The bill of complaint (Record, pp. 1-18) was filed by plaintiff, a stockholder in the Kansas City Title and Trust Company, a trust company organized under the laws of Missouri, to enjoin it from purchasing for investment pursuant to resolution of its Board of Directors, certain Federal Land Bank bonds and Joint Stock Land Bank bonds, upon the ground that the said bonds and the tax exemption features thereof were invalid, unlawful and unconstitutional. By proper proceedings, the Federal Land Bank of Wichita, Kansas, was permitted to intervene on behalf of itself and all other Federal Land Banks (Rec., p. 20), the First Joint Stock Land Bank of Chicago, Illinois, was permitted to intervene in behalf of itself and all of the other Joint Stock Land Banks (Rec., p. 19); and the United States was heard as *amicus curiae* (Rec., p. 34). By consent of all parties the bill was amended by interlineations, which amendatory matter, it was agreed, should at all times and under all circumstances be treated as if in the original bill as and when filed (Rec., p. 31). The defendant Trust Company moved to dismiss the bill for want of equity (Rec., p. 21). The United States and each of said intervenors, to speed an early disposition of the cause, adopted as their own and were heard upon the defendant's motion to dismiss (Rec., p. 31). After two days' argument before VAN VALKENBURG, *J.*, the motion was granted and a final decree was entered, from which plaintiff was allowed an appeal (p. 31). The appeal was perfected and a motion to advance

was, on November 17th, granted by this Court on account of the nature and public interest of the questions involved.

Case Made by the Bill of Complaint.

The bill shows that since the passage of the Farm Loan Act, the United States has been divided, pursuant to its provisions, into twelve Land Bank Districts, in each of which one Federal Land Bank has been organized, and that up to July 1, 1919, these twelve banks have issued capital stock to the aggregate amount of $8,892,130, of which, stock to the amount of $8,265,809 is held by the Treasury Department of the United States; that up to September 30th, 1919, said Federal Land Banks have issued Farm Loan bonds to the amount of $285,600,000, of which about $135,000,000 have been purchased and are held in the Treasury of the United States; that up to September 30th, 1919, twenty-seven Joint Stock Land Banks had been incorporated under the Act, with an aggregate capital of $8,000,000, all of which had been subscribed and $7,450,000 paid in, and that said Joint Stock Land Banks have issued, under the provisions of the Act, Farm Loan bonds to the aggregate amount of $41,000,000, which are now outstanding in the hands of the public (Rec., pp. 9-10).

The bill further shows that the Federal Land Banks on September 30, 1919, were the owners of United States bonds to the par value of $4,230,805 and that the Joint Stock Land Banks, on August 31, 1919, were the owners of United States bonds to the par value of $3,287,503 (Rec., p. 9): that pursuant to the provisions of Sec. 32 of the Federal Farm Loan Act, as amended in 1918, the Secretary of the Treasury made certain deposits for the temporary use of the Federal Land Banks, out of moneys in the Treasury, a statement whereof is set forth on page 8 of the Record, for which said banks issued their respec-

tive certificates of indebtedness bearing 2 per cent. interest per annum (Rec., p. 8).

That during the summer of 1918, the Federal Land Banks of Wichita, St. Paul and Spokane, respectively, were designated as financial agents of the Government for the making of seed grain loans to farmers in drought stricken sections, the President having set aside $5,000,000 for that purpose out of his $100,000,000 war fund. That the three banks mentioned had made upwards of 15,000 loans of said character, aggregating upwards of $4,500,000, all of which were secured by crop liens and that the said banks were now engaged in collecting said loans. That the said banks acted in the matter without compensation. That up to the time of filing the bill of complaint, the Secretary of the Treasury had not designated any of the Federal Land Banks, or Joint Stock Land Banks as depositaries of public moneys, nor, except as above stated, had they or any of them performed any duties as depositaries of public money or as financial agents of the Government (Rec., p. 10). Averring that the officers of the Trust Company proposed to buy with its moneys Farm Loan Bonds issued by each class of the Land Banks above described "solely because of its belief in (a) the validity of said bonds, and especially (b) in the exemption thereof from all forms of taxation"; that the acts of Congress under which said bonds were issued were unconstitutional and that said bonds, if purchased, would be subject to taxation, despite the exemption in the act of Congress, plaintiff as a stockholder of the Trust Company brought this suit to restrain the alleged unlawful application of its funds (Rec., pp. 15-17).

The Court (VAN VALKENBERG, J.), at the close of the arguments, delivered an oral opinion (Rec., pp. 22-30) in which he sustained the Constitutionality of the Act in all respects, as to both classes of Land Banks, and therefore ordered that the bill be dismissed for want of equity.

The Federal Farm Loan Act.

The Federal Farm Loan Act was approved by the President July 17, 1916. It is entitled:

> "An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States, and for other purposes."

Federal Farm Loan Bureau.

The administration of the Act is placed (Sec. 3) under the direction and control of a Federal Farm Loan Bureau, established at the seat of government, in the Treasury Department, under the general supervision of a Federal Farm Loan Board, consisting of the Secretary of the Treasury, who is ex-officio Chairman of the Board, and of four members appointed by the President, by and with the advice and consent of the Senate. One of the members is to be designated by the President as the Farm Loan Commissioner, who shall be the active executive officer of the Board.

Federal Land Banks.

The Board is required, as soon as practicable, to divide the continental United States, excluding Alaska, into twelve districts, apportioned with due regard to the farm loan needs of the country, which shall be known as Federal Land Bank Districts, and to establish in each of said districts a Federal Land Bank (Sec. 4). Each of these banks must have, before beginning business, a subscribed capital of not less than $750,000, divided into

shares of $5.00 each, which may be subscribed for and held by any individual, firm or corporation, or by the government of any state, or of the United States. No dividends shall be paid on the stock owned by the U. S. Government, but all other stock shall share in dividend distributions without preference (Sec. 5). Each National Farm Loan Association and the United States Government are entitled to one vote for each share of stock held by them or it respectively. No other shareholder is permitted to vote (Sec. 5).

The Federal Farm Loan Board is to designate five directors who shall temporarily manage the affairs of each Federal Land Bank, and who shall prepare an organization certificate which, when approved by the Federal Farm Loan Board and filed with the Farm Loan Commissioner, operates to create the bank a body corporate, with the powers enumerated in the Act (Sec. 4). It is made the duty of the Federal Farm Loan Board to open books of subscription for the capital stock of a Federal Land Bank in each Federal Land Bank district, and if within thirty (30) days thereafter any part of the minimum capitalization of $750,000 of any such bank shall remain unsubscribed, it is made the duty of the Secretary of the Treasury to subscribe the balance on behalf of the United States (Sec. 5). The act imposes no liability upon the shareholders beyond the amount of their respective subscriptions to the stock.

The amending act of January 18th, 1918, which authorizes the Secretary of the Treasury during the years 1918 and 1919 to purchase bonds issued by Federal Land Banks, provides that the temporary organization of any such bank provided for in Section 4, shall be continued so long as any Farm Loan Bonds purchased from it under the provisions of the amendment shall be held by the Treasury, and until the subscriptions to stock in such bank by National Farm Loan Associations shall equal

the amount of its stock held by the United States Government. When these conditions shall be met, the permanent organization provided for in Section 4 is to take over the management of the bank. This permanent organization consists in a Board of Directors composed of nine members, each holding office for three years, six of whom, to be known as Local Directors, shall be chosen by, and be representative of, National Farm Loan Associations, and the remaining three directors, to be known as District Directors, shall be appointed by the Federal Farm Loan Board, and shall represent the public interest. One of the District Directors is to be designated as Chairman of the Board by the Federal Farm Loan Board.

The Federal Land Banks are empowered to invest their funds in the purchase of qualified first mortgages on farm lands situated within the Federal Land Bank District within which they are organized or acting (Sec. 13, par. 2).

National Farm Loan Associations.

Loans on farm mortgages are to be made to co-operative borrowers through the organization of corporations to be known as National Farm Loan Associations by persons desiring to borrow money on farm mortgage security under the terms of the Act. Ten or more natural persons who are the owners or about to become the owners of farm land qualified as security for mortgage loans, and who desire to borrow money on farm mortgage security, may unite to form a National Farm Loan Association by complying with the provisions of Section 7 of the Act.

The articles of association when presented to the Federal Land Bank shall be accompanied by the written report of a Loan Committee appointed in conformity with the Act, and by proof that each of the subscribers

is the owner, or is about to become the owner, of farm land, qualified under Section 12 as the basis of a mortgage loan; that the loan desired by each person is not more than $10,000, nor less than $100, and that the aggregate of the desired loan is not less than $20,000; it must also be accompanied by a subscription to stock in the Federal Land Bank equal to five per centum (5%) of the aggregate sums desired on mortgage loans (Sec. 7). The Federal Land Bank must then have an appraisal made of the land, and report to the Federal Farm Loan Board its recommendation, upon which, if favorable, the Board shall grant a charter to the applicants, designating the territory in which the proposed association may make loans, whereupon the association is authorized and empowered to receive from the Federal Land Bank of the district sums loaned to its members under the terms and conditions of the Act. Thereafter any National Farm Loan Association may secure for any of its members a loan on first mortgage from the Federal Land Bank of the district, but, in connection with such application, it must subscribe and pay in cash for capital stock of the Land Bank to the amount of five per cent. (5%) of such loan, such stock to be held by the Land Bank as collateral security for its repayment, the association receiving any dividends accruing and payable on said stock while it is outstanding. Upon the payment of the mortgage loan the stock shall be retired. No persons but borrowers on farm land mortgage shall be members or shareholders of National Farm Loan Associations. Each shareholder is entitled to one vote for each share held by him at the elections of directors and other shareholders' meetings, provided no one shareholder shall cast more than twenty (20) votes. Shareholders in the National Farm Loan Associations are made individually responsible equally and ratably for the debts of the Association, to the extent of the amount of stock owned by them respectively at its

par value, in addition to the amount paid in and represented by their shares (Sec. 9).

Whenever any National Farm Loan Association shall desire to secure for any member a loan on first mortgage from the Federal Land Bank in its district, it must subscribe for capital stock of the Land Bank to the amount of five per cent. (5%) of such loan, the subscription to be paid in cash upon the granting of the loan. Such capital stock shall be held by the Land Bank as collateral security for the repayment of the loan, but the Association shall be paid any dividends accruing and payable on the capital stock while it is outstanding. Such stock may, in the discretion of the directors and with the approval of the Federal Farm Loan Board, be paid off at par and retired, and shall be so retired upon full payment of the mortgage loan. In such event, the National Farm Loan Association must pay off at par and retire the corresponding shares of its stock which were issued when the Land Bank stock so retired was issued; but it is further provided that the capital stock of the Federal Land Bank shall not be reduced under an amount less than five per cent. (5%) of the principal of the outstanding Farm Loan Bonds issued by it (Sec. 7). The shares in National Farm Loan Associations shall be of the par value of $5.00 each. No persons but borrowers on farm land mortgages may be members or shareholders of a National Farm Land Association.

Any person desiring to secure a loan through a National Farm Loan Association under the provisions of the Act shall make application for membership and shall subscribe for shares of stock in such Farm Loan Association, to an amount equal to 5 per cent. of the face of the desired loan, to be paid in cash on the granting of the loan. Upon such payment, the applicant becomes the owner of one share of stock in said Loan Association for each $100 of the face of the loan. Such stock shall be

paid off at par and retired upon full payment of the loan. It shall be held by the Association as collateral security for the loan, but the borrower shall be entitled to any dividends accruing and payable on the stock while it is outstanding (Sec. 8). Any person desiring to secure a loan through a National Farm Loan Association may at his option borrow from the Federal Land Bank, through such association the amount necessary to pay for shares of stock subscribed for by him in the National Farm Loan Association, such sum to be made a part of the face of the loan, and to be paid off in amortization payments (Sec. 9). After the subscriptions to the capital stock by a National Farm Loan Association shall amount to $750,000 in any Federal Land Bank, said bank must apply semi-annually to the payment and retirement of the shares of stock which were issued to represent the subscriptions to the original stock, twenty-five per cent. (25%) of all sums thereafter subscribed to the capital stock until such original capital stock is retired at par.

At least 25 per cent. of that part of the capital of any Federal Land Bank for which stock is outstanding in the name of National Farm Loan Associations must be held in quick assets. Not less than 5 per cent. of such capital must be invested in U. S. Government Bonds (Sec. 5).

Federal Farm Loans.

The loans which Federal Land Banks may make upon first mortgages on farm lands are very carefully regulated and restricted by the provisions of Section 12 of the Act. The Federal Land Banks by Section 13 are empowered, subject to the limitations and requirements of the Act, to issue and sell Farm Loan Bonds of the kinds described in the Act, to invest funds in their possession in qualified first mortgages on farm lands, to receive and to deposit in trust with the Farm Loan Registrar for

the district, to be held by him as collateral security for Farm Loan Bonds, first mortgages upon farm land, qualified under Section 12, and, with the approval of the Federal Farm Loan Board, to issue and sell their bonds secured by the deposit of first mortgages on qualified farm lands as collateral, in conformity with the provisions of Section 18 of the Act. By the amendment of January 18th, 1918, the Secretary of the Treasury was empowered during the years 1918 and 1919, to purchase Farm Loan Bonds issued by the Federal Land Banks to an amount not exceeding $100,000,000 in each year, and any Federal Land Bank was authorized at any time to repurchase at par and accrued interest, for the purpose of redemption or resale, any of the bonds so purchased from it and held in the U. S. Treasury. It is also provided, that the bonds of any Federal Land Bank so purchased and held in the Treasury one year after the termination of the pending war shall, upon thirty (30) days' notice from the Secretary of the Treasury, be redeemed and repurchased by such Bank at par and accrued interest. By Section 15, it is provided that whenever, after the Act shall have been in effect one year, it shall appear to the Federal Farm Loan Board that National Farm Loan Associations have not been formed and are not likely to be formed, in any locality, because of peculiar local conditions, the Board may in its discretion authorize Federal Land Banks to make loans on farm lands through agents approved by the Board, on the terms and conditions and subject to the restrictions prescribed in that Section.

Joint Stock Land Banks.

Another and different class of corporations to accomplish the objects of the Act, to be known as Joint Stock Land Banks, is provided for in Section 16. The capital of these corporations must be provided wholly by private subscription. The Government is not authorized to subscribe for or acquire any stock in this class of banks. They are to be organized by not less than ten natural persons subject to the requirements and under the conditions set forth in Section 4 of the Act, so far as the same are applicable. The Board of Directors shall consist of not less than five members. Each shareholder shall have the same voting privileges as holders of shares in national banking associations, and is subject to the same double liability for debts of the Bank as is imposed upon shareholders in National Banks. A Joint Stock Land Bank shall be authorized to do business when capital stock to an amount of at least $250,000 has been subscribed, and one-half paid in cash, the balance remaining subject to call by the Board of Directors, and a charter issued by the Federal Farm Loan Board. Such a bank may not issue any bonds until after the capital stock is entirely paid up.

> "Except as otherwise provided, joint stock land banks shall have the powers of, and be subject to all the restrictions and conditions imposed on, Federal land banks by this Act, so far as such restrictions and conditions are applicable."
> (Sec. 16, par. 3.)

Federal Land Banks may issue Farm Loan Bonds up to twenty (20) times the amount of their capital and surplus (Sec. 14). Joint Stock Land Banks are limited to the issue of Farm Loan Bonds not in excess of fifteen (15) times the amount of their capital and surplus.

No Federal Land Bank shall have power,

> "SECOND: To loan on first mortgage except through national farm loan associations as provided in section seven and section eight of this Act, or through agents as provided in section fifteen."
>
> "THIRD. To accept any mortgages on real estate except first mortgages created subject to all limitations imposed by section twelve of this Act, and those taken as additional security for existing loans" (Sec. 14).

Joint Stock Land Banks are not similarly restricted, nor are they subject to the control which the Federal Farm Loan Board is given over the rates of interest to be charged by Federal Land Banks for loans made by them (Sec. 17, par. b); but no loan on mortgage may be made by *any* bank under the Farm Loan Act at a rate exceeding 6 per cent. per annum, exclusive of amortization payments (Sec. 12, par. 3rd), and Joint Stock Land Banks in no case shall charge a rate of interest on farm loans exceeding by more than one per cent. (1%) the rate established for the last series of Farm Loan Bonds issued by them (Sec. 16), which rate may not exceed 5 per cent. per annum (Sec. 20). Federal Land Banks are authorized to charge applicants for loans and borrowers, under rules and regulations promulgated by the Federal Farm Loan Board, reasonable fees, not exceeding the actual cost of appraisal and the determination of title (Sec. 13, par. 9th). Joint Stock Land Banks shall in no case receive any commission or charge not specifically authorized by the Act.

Section 12 imposes very definite terms and conditions upon the making of loans by the Federal Land Banks.

By Section 16, Joint Stock Land Banks are exempted from certain of those restrictions, but it is provided

> "that no loans shall be made [by Joint Stock Land Banks] which are not secured by first mortgages on farm lands within the State in which such * * * bank has its principal office, or within some one State contiguous to such State."

The Joint Stock Land Banks are made subject to all other restrictions on mortgage loans imposed on Federal Land Banks in Section 12 of the Act. In general, these restrictions, thus made applicable, require each mortgage to contain agreements for the repayment of the loan on an amortization plan (Sec. 12, par. 2nd); limit the rate of interest to be charged on the loan to six per cent. (6%), exclusive of amortization payments; and provide that the loan shall not exceed fifty per cent. (50%) of the value of the land mortgaged, and twenty per cent. (20%) of the value of permanent insured improvements thereon.

Deposits.

Federal Land Banks are authorized to accept deposits of securities or current funds from National Farm Loan Associations holding their shares, but to pay no interest on such deposits, and to buy and sell United States bonds (Sec. 13). Joint Stock Land Banks are restricted to receiving deposits from their own stockholders.

Farm Loan Bonds.

The provisions for the issue of Farm Loan Bonds secured by first mortgages on farm lands, or United States Government bonds, as collateral, which must be deposited with and held in trust by the Federal

Farm Loan Registrar, are the same in the case of both the Federal Land Banks and the Joint Stock Land Banks. In each case, every step in the issue is made subject to approval of the Federal Farm Loan Board (Secs. 18, 19, 20, 22). The bonds are to be prepared and delivered to the banks by the Farm Loan Board (Sec. 20). The farm mortgages or U. S. bonds which constitute the collateral security for the bonds, whether issued by Federal Land Banks or Joint Stock Land Banks, must be deposited with and held by the Farm Loan Commissioner (Secs. 18, 19). By Section 16, bonds issued by the Joint Stock Land Banks are required to be so engraved as to be readily distinguishable in form and color from Farm Loan Bonds issued by Federal Land Banks, and otherwise to bear such distinguishing marks as the Federal Farm Loan Board shall direct. Such bonds issued by Joint Stock Land Banks are to be in form prescribed by the Federal Farm Loan Board, and it must be stated in such bonds that the Bank is organized under Section 16 of the Act, is under Federal supervision, and operates under the provisions of the Act (Sec. 16). By Section 21, every Federal Land Bank in effect is made guarantor for the payment of all Farm Loan Bonds issued by all of the other Federal Land Banks. Every bond issued by a Federal Land Bank must carry a certificate signed by the Farm Loan Commissioner to the effect

> "that it is issued under the authority of the Federal Farm Loan Act, has the approval in form and issue of the Federal Farm Loan Board, and is legal and regular in all respects; that it is not taxable by National, State, municipal, or local authorities; that it is issued against collateral security of the United States Government bonds or indorsed first mortgages on farm lands at least equal in amount to the bonds issued, and that all Federal Land Banks are liable for the payment of each bond."

Application of Amortization Payments.

By Section 22, amortization and other payments on the principal of first mortgages held by the Farm Loan Registrar as collateral security for the issue of Farm Loan Bonds constitute a trust fund in the hands of the Federal Land Bank or Joint Stock Land Bank receiving the same, and shall be applied or employed as follows:

> "In the case of a Federal land bank—
>
> "(a) To pay off farm loan bonds issued by said bank as they mature.
>
> "(b) To purchase at or below par farm loan bonds issued by said bank or by any other Federal land bank.
>
> "(c) To loan on first mortgages on farm lands within the land bank district, qualified under this Act as collateral security for an issue of farm loan bonds.
>
> "(d) To purchase United States Government bonds."
>
> "In the case of a Joint Stock Land Bank—
>
> "(a) To pay off farm loan bonds issued by said bank as they mature.
>
> "(b) To purchase at or below par farm loan bonds.
>
> "(c) To loan on first mortgages qualified under section sixteen of this Act.
>
> "(d) To purchase United States Government bonds."

Bonds so purchased must forthwith be deposited with the Federal Farm Loan Registrar as substituted collateral security in place of the sums paid on the principal of indorsed mortgages held by him in trust.

Section 23, respecting the creation of reserves, applies

equally to Federal Land Banks and Joint Stock Land Banks, and authorizes the declaration of dividends to shareholders of the respective banks of the balance of net earnings after creating the required reserves.

Tax Exemption.

Section 26 provides as follows:

> "That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks or to joint stock land banks and farm loan bonds issued under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.
>
> "Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the bank is located, but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.
>
> "Nothing herein shall be construed to exempt the real property of federal and joint stock land banks and national farm loan associations from either State, county or municipal taxes to the same extent according to its value as other real property is taxed."

Farm Loan Bonds Trust Investments.

By Section 27, Farm Loan Bonds issued under the Act by Federal Land Banks or Joint Stock Land Banks are made lawful investments for all fiduciary and trust funds, and may be accepted as security for all public deposits. Any member bank of the Federal Reserve System is authorized to buy and sell Farm Loan Bonds issued under the authority of the Act, and any Federal Reserve bank may buy and sell Farm Loan Bonds issued under the same, to the same extent and subject to the same limitations as are placed upon the purchase and sale by said banks of State, county, district and municipal bonds by Subdivision b, Section 14, of the Federal Reserve Act.

Receivership.

By Section 29, in the event of insolvency or default in the payment of any obligation, Federal Land Banks and Joint Stock Land Banks respectively are made liable to receivership at the direction of the Farm Loan Board.

Treasury Deposits in Federal Land Banks.

Section 32 authorizes the Secretary of the Treasury to make deposits for the temporary use of any Federal Land Bank out of money in the Treasury not otherwise appropriated, provided the aggregate of such deposits shall not at any one time exceed the sum of Six million dollars ($6,000,000).

Designation of Land Banks as Depositaries of Public Money and Fiscal Agents.

Section 6 provides:

> "That all Federal land banks and joint stock land banks organized under this Act, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government as may be required of them. And the Secretary of the Treasury shall require of Federal land banks and joint stock land banks thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of the public money deposited with them and for the faithful performance of their duties as financial agents of the Government. No Government funds deposited under the provisions of this section shall be invested in mortgage loans or farm loan bonds."

Scheme of Act.

Generally speaking, it is apparent from this summary, that the scheme of the act contemplates the procurement of large sums of money for the purpose of stimulating agricultural development throughout the country by loaning the same on farm mortgages for the development of farm lands, at low rates of interest. The moneys to be so loaned are in part to be furnished directly by the United States, through subscriptions to the capital stock of the Federal Land Banks, intended to be temporary and to be replaced by subscriptions through Farm Loan Associations; in part through subscriptions by private in-

dividuals to the capital stock of both of the two classes of Land Banks to be organized under the Act. These moneys in turn are to be replenished and augmented through the sale of bonds issued by Federal Land Banks, or Joint Stock Land Banks, secured by the deposit as collateral of farm loan mortgages or United States bonds, under the supervision of the Federal authorities created by the Act. The bonds thus authorized are declared to be instrumentalities of the United States in the accomplishment of the purposes of the Act, and therefore are exempted from taxation. The Land Banks so authorized are also given certain of the powers usually vested in banks of deposit and may be made Fiscal Agents of the United States.

The system is designed to provide for the development of agriculture substantially what has been accomplished for commerce and industry by the national banking system, and also to provide an additional source to those previously existing, from which to draw loans to the United States on its bonds. The banks which Congress has seen fit to create for the purpose of carrying out the purposes of this Act, are not primarily banks of general deposit and issue; they are created to extend to the farmers facilities as responsive to their needs as those furnished by the banks of deposit and discount to the commercial world. They are to serve a great public purpose, the vital importance of which to the national welfare, has been strikingly demonstrated during the Great War.

The Appellant devotes a page or more of his brief to an *ad captandum* effort to discredit the Farm Loan Act by the assertion that it was based

> "upon the German plan of collective and co-operative borrowing of money on long-time farm mortgages. The words 'German plan' are used advisedly. Such plan was first adopted in Prussia. It found its principal development in Germany."

Again, he says:

> "It is quite significant that the plan is German, as the real question here is whether there has been enacted a law inimical to the spirit of our institutions and contrary to the provisions of our Constitution."

"Merely because the system is German," he says, "does not *necessarily* imply that it is illegal" (Brief, pp. 6, 8). A striking admission!

Without commenting upon the taste displayed in submitting suggestions of such nature to this Court, nor of the Appellant's appreciation of the weakness of his objections to the constitutionality of the Act exhibited by the attempt to buttress arguments by an appeal to national prejudice, the fact is, that in favorably reporting the bill to the House of Representatives on May 3, 1916, the Committee on Banking and Currency stated that

> "Whatever its obligations to successful foreign systems," the bill "provides for a distinctively American system of rural credits and endeavors to embody, and it is confidently believed, does embody, the best thought which the thorough discussion of the past years has developed with reference to rural-credits legislation."

And again, that

> "Your Committee has endeavored to draft a bill which when enacted into law shall provide an American system dedicated to the peculiar needs of the American farmer and so organized as to give service as efficiently as any system of rural credits in any other country in the world."
>
> [64th Cong., 1st Session, Report No. 630 on Rural Credits. To accompany H. R. 15004.]

But considerations of this nature are wholly irrelevant in this Court, where the only inquiry is whether or not Congress exceeded its constitutional powers in the enactment of the statute under consideration.

ARGUMENT.

I.

The general purposes of the Farm Loan Act might have been attained by Congress through the direct exercise of the powers of taxation and borrowing.

The appellant will hardly dispute in this Court certain propositions which he expressly conceded on the argument in the District Court, viz., that Congress having power to borrow money and to levy and collect taxes, can appropriate public moneys under the general welfare clause, even for a purpose not expressly authorized by the Constitution; that the stimulation of agriculture is a public purpose for which Congress may appropriate moneys, and that it may apply the moneys so appropriated through the mechanism of a corporation created or adapted by it for the purpose. These propositions are established by authority beyond the point of serious dispute.

(*a*) "Up to the time the Federal Reserve Act was enacted, our whole banking and credit system was established without reference to the special need of the farmer. The Federal Reserve Act of December 23, 1913 (38 Stats., 251), for the first time in our banking legislation gave consideration to the peculiar needs of the farmer" (H. R. Report 630, May 3, 1916). Section 13 of that act empowered any Federal Reserve bank to receive from any member bank and discount notes, drafts

and bills of exchange issued or drawn for agricultural purposes, or the proceeds of which were used for such purposes, including notes, etc., secured by staple agricultural products or other goods, wares or merchandise, provided that such notes, drafts and bills should mature within not longer than six months, and provided that the amount of negotiable paper of that class should be limited to a percentage of the capital of the Federal Reserve Bank to be ascertained and fixed by the Federal Reserve Board. Section 24, as amended September 7, 1916 (39 Stats., 754), empowered any national banking association, not situated in a central reserve city, to make loans secured by improved and unincumbered farm lands within its district, or within 100 miles from the place of its location, for a period not exceeding five years, such loans in the aggregate not to exceed 25 per cent. of the lending bank's capital and surplus, nor one-third of its time deposits.

These provisions met only a part of the needs of the farmers of the country, and failed to furnish that which was most essential to the development of the Nation's agricultural resources, namely, advances to be used for the purchase or improvement of farm lands, repayable by amortization over a period of years long enough to enable the borrower to repay the loan out of the profits realized through the development of the property. A recognition of this lack led to the enactment of the Farm Loan Act.

The House Committee on Banking and Currency reported on May 3, 1916 (Report 630):

> "It has become manifest that a new form of credit organization must be established which shall be especially and peculiarly adapted to the farmers' requirements. It must be designed to give a service that commercial banks, savings banks, insurance companies, individuals, and other existing agencies cannot give at the present time. For

> example, it must be enabled and prepared to grant long-time amortizable loans upon farm-land mortgages at low interest rates; it must be enabled to secure ample funds for the use of the farmer from the investing public. Under such a system the farmer borrower will not be compelled to assume a high interest rate mortgage obligation due within a comparatively short period of time under which he is subjected to frequent renewals with the incidental trouble, expense, and danger of foreclosure, and will not be dependent upon credit obtained under the most exacting and burdensome conditions.

The creation of such a national system of rural credits is a great public purpose which Congress might have provided for, either by direct appropriation, or through the existing national and reserve bank system, or by the creation of new agencies especially adapted to the designated end.

The Federal Farm Loan Act is entitled,

> "An Act To provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

The system which it establishes is characterized by the Secretary of the Treasury in his report to Congress for the year 1918, as

> "the great governmental agency for financing a basic industry of the United States—that of agriculture."

(*b*) The power of Congress to raise and appropriate money for the general purpose of aiding in the development of agriculture in general hardly can be questioned.

It rests upon the powers granted by Article I, Section 8, of the Constitution, which reads:

> "The Congress shall have power
>
> "(1) To lay and collect taxes, duties, imposts, excises, to pay the debts and provide for the common defense and general welfare of the United States;
>
> • • • • • • •
>
> "(2) To borrow money on the credit of the United States;
>
> • • • • • • •
>
> "(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

The weight of authority is to the effect that the proper construction of paragraph (1) above quoted is, that the power to lay and collect taxes is not unlimited, but is qualified by the second part of the paragraph, namely, *for the purpose of* providing for the common defense and promoting the general welfare (*Miller's Lectures on The Constitution*, p. 230; *Story on The Constitution*, Secs. 907, 908, 909, 922).

(*c*) It is equally well settled, that the power of taxation thus granted is not confined to the purpose of revenue, nor limited in its objects to those purposes which are enumerated in the paragraphs following the first in Section 8 of Article I (1 *Story*, Secs. 925, 975-978).

In Section 978, Judge STORY refers to Hamilton's Report on Manufactures, 1791, and in Section 979, to President Monroe's Message concerning the bill appropriating for repairs to the Cumberland road.

In the report, Hamilton pointed out that the power of Congress to raise money was plenary,

> "and the objects to which it may be appropriated are no less comprehensive than the payment of public debts and the providing for the common defense and general welfare."

Considering this phrase, "general welfare," he said:

> "And there seems no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, *so far as regards an application of money.* The only qualification of the generality of the phrase in question which seems to be admissible is this, that the object to which an appropriation of money is to be made must be *general* not *local*—its operation extending in fact or by possibility throughout the union, and not being confined to a particular spot."

Story, commenting on these opinions, refers to the practice of the government as having been "entirely in conformity to the principles here laid down." Appropriations, he says,

> "have never been limited by Congress to cases falling within the specific powers enumerated in the Constitution, whether those powers be considered in their broad, or their narrow sense" (§991).

And he refers to a number of striking instances of appropriations for purposes, none of which was within any of the express powers granted in the succeeding paragraphs of Section 8 after paragraph (1).

See also *Willoughby on The Constitution*, Sec. 269.

(d) **The only limitation upon the power of Congress to appropriate moneys is that the purpose shall be public and general as distinguished from private. Even this limitation is not always observed.**

It seems to have been recognized from the foundation of the government that the power of Congress to appropriate is co-extensive with the power to tax (*Story on Constitution*, Secs. 922, 924), and in fact, in the exercise of the power of appropriation, the practice has been even broader than the scope of the power to tax. As *Prof. Willoughby* says:

> "The limitation that an appropriation should be for a public purpose has been without practical effect as the courts have in no case attempted to hold invalid an appropriation by Congress on the ground that it has been for a purpose not public in character; and as regards the restriction that appropriations shall be in aid of enterprises which the federal government is empowered to undertake, the doctrine has become an established one that Congress may appropriate money in aid of matters which the federal government is not constitutionally able to administer and regulate" (§269).
>
> "It has been generally held, however, that a tax may be levied avowedly and exclusively not for revenue but as a means for regulating a matter which is within the legislature's power to control. Thus in *Veazie Bank v. Fenno*, 8 Wall., 533, the power of Congress to levy a tax as a means of regulating the currency is upheld."

Willoughby on The Constitution Sec. 263, citing *Head Money Cases*, 112 U. S., 580.

Congress also may by a law framed as a tax measure in effect subject to regulation or even to destruction, an enterprise over which it has no direct power of control, 1 *Willoughby*, Sec. 263, citing *McCray v. U. S.*, 195 U. S.,

27, upholding a prohibitive tax on oleomargarine artificially colored to resemble butter.

See also *Flint* v. *Stone Tracy Co.*, 220 U. S., 107, 169.

The great scope of the legislative power to tax is described by Judge Cooley (*Const. Lim.*, pp. 184-185) in the following language:

> "Taxes should only be levied for those purposes which properly constitute a public burden. But what is for the public good, and what are public purposes, and what does properly constitute a public burden, are questions which the legislature must decide upon its own judgment, and in respect to which it is vested with a large discretion which cannot be controlled by the courts, except perhaps where its action is clearly evasive, and where under pretence of a lawful authority, it has assumed to exercise one that is unlawful. Where the power which is exercised is legislative in character, the courts can enforce only those limitations which the constitution imposes; not those implied restrictions which, resting in theory only, the people have been satisfied to leave to the judgment, patriotism and sense of justice of their representatives."

Willoughby (Sec. 268) says, that while the validity of the proposition that taxation can be levied only for public purposes is beyond dispute, judicial records furnish comparatively few instances of tax levies being held void for this reason:

> "This is due in the first place to the fact that not often do the laws expressly state the purpose for which a tax is levied, and in the second place, where this purpose is stated, the courts will, in deference to the legislative judgment, construe the purpose to be a public one if it is possible to do so."

He quotes *Brodhead* v. *City of Milwaukee*, 19 Wis., 624, where it was said:

> "To justify the court in arresting the proceedings and declaring a tax void, the absence of all possible public interest in the purpose for which the funds are raised must be clear and palpable to every mind at the first blush."

Willoughby distinguishes *Loan Association* v. *Topeka*, 20 Wall., 655, in that the case did not involve a law levying a tax, but one authorizing towns to issue bonds payable to private manufacturing companies to encourage and aid them in establishing their plants within their respective jurisdictions. It was there held by the Court that inasmuch as taxes would have to be levied for the payment of these bonds, the law in effect attempted to authorize the towns to levy taxes in aid and encouragement of a private purpose, and was, therefore, void. MILLER, J., said, referring to decisions which had upheld taxation in aid of the building of railroads, that in all those cases the decision turned upon the finding that the building of a railroad was for a public purpose; that railroads had not lost this public character because constructed by individual enterprise aggregated into a corporation. It was further said (p. 664):

> "The courts can only be justified in interposing when a violation of this principle is clear and the reason for interference cogent. And in deciding whether, in the given case, the object for which the taxes are assessed falls upon the one side or the other of this line, they must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, what objects and purposes have been considered necessary to the support and for the proper use of the government, whether State or municipal. Whatever lawfully pertains to these and is sanctioned

> by time and the acquiescence of the people may well be held to belong to the public use, and proper for the maintenance of good government, though this may not be the only criterion of rightful taxation."

United States v. *Gettysburg Railway*, 160 U. S., 668, involved the constitutionality of an act of Congress providing for the acquisition, through the exercise of the power of eminent domain, of property at Gettysburg, to be used for the purpose of preserving the lines of the great battle fought there, and for properly marking with tablets the positions occupied by the various commands of the armies on that field, for opening and improving avenues along the positions occupied by troops, etc. Appropriations had been made for the purpose of carrying out the provisions of the act. The plans made pursuant thereto involved taking lands which the Gettysburg Electric Railway Company was occupying as a part of its right of way. The District Court held the act to be unconstitutional. This was reversed in the Supreme Court, PECKHAM, J., writing the opinion, the initial statement of which is that

> "The really important question to be determined in these proceedings is, whether the use to which the petitioner desires to put the land described in the petitions is of that kind of public use for which the government of the United States is authorized to condemn land. It has authority to do so whenever it is necessary or appropriate to use the land in the execution of any of the powers granted to it by the Constitution."

It was then held that the proposed use to which this land was to be put was a public use within this limitation.

> "Any act of Congress which plainly and directly tends to enhance the respect and love of the citizen for the institutions of his country and

to quicken and strengthen his motives to defend them, and which is germane to and intimately connected with the appropriate exercise of some one or all of the powers granted by Congress must be valid. This proposed use comes within such description."

The Court pointed out the significance of the battle of Gettysburg, the importance of the issues involved, the valuable lessons in the art of war and in patriotism that could be taught therefrom, and said:

> "Such a use seems necessarily not only a public use, but one so closely connected with the welfare of the republic itself as to be within the powers granted Congress by the Constitution for the purpose of protecting and preserving the whole country."

In the *Legal Tender Case*, 110 U. S., 421, the power of Congress to make the treasury notes of the United States a legal tender in payment of private debts, in time of peace as well as in time of war, was upheld. The Court (per GRAY, J.) said (p. 444):

> "The words 'to borrow money,' as used in the Constitution, to designate a power vested in the national government, for the safety and welfare of the whole people, are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute, or in an authority conferred, by law or by contract, upon trustees or agents for private purposes.
>
> "The power 'to borrow money on the credit of the United States' is the power to raise money for the public use on a pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the government. It includes the power to issue, in return for the money borrowed, the obligations of the United States in any appropriate form, of stock, bonds,

bills or notes; and in whatever form they are issued, being instruments of the national government, they are exempt from taxation by the governments of the several States, *Weston* v. *Charleston City Council*, 2 Pet., 449; *Banks* v. *Mayor*, 7 Wall., 16; *Bank* v. *Supervisors*, 7 Wall., 26. Congress has authority to issue these obligations in a form adapted to circulation from hand to hand in the ordinary transactions of commerce and business. In order to promote and facilitate such circulation, to adapt them to use as currency, and to make them more current in the market, it may provide for their redemption in coin or bonds, and may make them receivable in payment of debts to the government. So much is settled beyond doubt * * *."

It is true that in *United States* v. *Realty Co.*, 163 U. S., 427, the Supreme Court declined to pass upon the constitutionality of provisions in the Tariff Act of 1890 which granted bounties to producers of sugar within the United States, because those provisions had been repealed and the specific question before the Court was as to the right of Congress to recognize the moral claim of producers who had qualified under the bounty act to receive payments from the government, but whose claims had not been paid before the repeal of the law, and in whose favor Congress had passed an act providing for payment of those claims. It was held that whether the bounty act were constitutional or not, the producers had a moral claim against the government, which Congress had a right to recognize, even though the claim were not of a strictly legal character. The Court said:

"Of course, the difference between the powers of the state legislatures and that of the Congress of the United States is not lost sight of, but it is believed that in relation to the power to recognize and to pay obligations resting only upon moral considerations or upon the general principles of

right and justice, the Federal Congress stands upon a level with the state legislature" (p. 443).

(*e*) The encouragement, stimulus and improvement of agriculture is a public purpose, and appropriations for such objects are for the general welfare. Such appropriations have been made by Congress from an early date in our history. As Chief Justice MARSHALL in *M'Culloch* v. *Maryland,* 4 Wheat. 316, 401, said:

> "It will not be denied, that a bold and daring usurpation might be resisted, after an acquiescence still longer and more complete than this. But it is conceived that a doubtful question, one on which human reason may pause and the human judgment be suspended, in the decision of which the great principles of liberty are not concerned, but the respective powers of those who are equally the representatives of the people, are to be adjusted, if not put at rest, by the practice of the government, ought to receive a considerable impression from that practice. An exposition of the constitution, deliberately established by legislative acts, on the faith of which an immense property has beeen advanced, ought not to be lightly disregarded."

As early as 1839, Congress passed an appropriation bill for the collection of statistics on agriculture by the Commissioner of Patents (5 Stats., 354).

In 1857, this power was enlarged to the extent of directing the Commissioner to procure and distribute cuttings and seeds, and to investigate the consumption of cotton throughout the world (11 Stats., 226). From time to time, similar appropriations were made, and on May 15th, 1862, the Department of Agriculture was created (12 Stats., 387), and the statistics and powers of the Commissioner of Patents were transferred to this

new department. The act creating this department (now U. S. R. S. Sec. 520) reads as follows:

> "There shall be at the seat of Government a Department of Agriculture, the general design and duties of which shall be to acquire and diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word, and to procure, propagate and distribute among the people new and valuable seeds and plants."

In 1889, an appropriation was made to the Entomological Commission under the Department of the Interior for the investigation of the Rocky Mountain locust or grasshopper and the cotton worn, but it was provided that such work in the future should be under the Department of Agriculture (21 Stats., p. 259).

Numerous appropriations have been made for the use and purposes of the Department of Agriculture since its creation. Thus, in 1863, an appropriation was granted (12 Stats., 691),

> "for the collection and compiling of agricultural statistics; for promoting agricultural and rural economy; and the procurement, propagation, and distribution of cuttings and seeds of new and useful varieties; and for the introduction and protection of insectivorous birds; and for the purpose of establishing a laboratory, with the necessary apparatus for practical and scientific experiments in agricultural chemistry * * *."

In 1884, a bureau of the Department of Agriculture was organized (23 Stats., 31), known as the Bureau of Animal Industry, to investigate and collect such information about domestic animals, their diseases, etc.,

> "as shall be valuable to the agricultural and commercial interests of the country."

In 1890, Congress created a Weather Bureau in the Department of Agriculture, the duties of which formerly had been performed by the Signal Corps of the Army (26 Stats., 653). It was provided:

> "That the Chief of the Weather Bureau * * * shall have charge of the forecasting of the weather, the issue of storm warnings, the display of weather and flood signals for the benefit of agriculture, commerce, and navigation * * *, the reporting of temperature and rainfall conditions for the cotton interests, the display of frost and cold wave signals, the distribution of meteorological information in the interests of agriculture and commerce * * *."

U. S. Comp. Stats., Section 8870, July 2nd, 1862, Chap. 130, Section 4, 12 Stats., 503, amended March 3rd, 1883, Chap. 102, 22 Stats. 484, provides for the establishment of State Agricultural Colleges. These may be formed from the proceeds of the sale of lands apportioned to the States, and from the sale of land scrip, these proceeds to be kept as a trust fund.

Section 8871 provides further appropriations for these colleges, in each of which there is located an agricultural experiment station.

Section 8879 enacts:

> "It shall be the object and duty of said experiment stations to conduct original researches or verify experiments on the physiology of plants and animals; the diseases to which they are severally subject, with the remedies for the same; the chemical composition of useful plants at their different stages of growth; the comparative advantages of rotative cropping as pursued under a varying series of crops; the capacity of new plants or trees for acclimation; the analysis of soils and water; the chemical composition of manures, natural or artificial, with experiments designed to

test their comparative effects on crops of different kinds; the adaptation and value of grasses and forage plants; the composition and digestibility of the different kinds of food for domestic animals; the scientific and economic questions involved in the production of butter and cheese; and such other researches or experiments bearing directly on the agricultural industry of the United States as may in each case be deemed advisable, having due regard to the varying conditions and needs of the respective States or Territories."

(March 2nd, 1887, Chap. 314, Sec. 2, 24 Stats., 440.)

Section 776, Comp. Stats. (March 2nd, 1889, Chap. 411, Sec. 1, 25 Stats., 960), is as follows:

"Irrigation Survey: For the purpose of investigating the extent to which the arid region of the United States can be redeemed by irrigation and the segregation of irrigable lands in such arid region, and for the selection of sites for reservoirs and other hydraulic works necessary for the storage and utilization of water for irrigation and for ascertaining the cost thereof, and the prevention of floods and overflows, and to make the necessary maps, including the pay of employees, in field and office, the cost of all instruments, apparatus, and materials, and all other necessary expenses connected therewith, the work to be performed by the geological survey under the direction of the Secretary of the Interior * * *."

In 1917, Congress passed an act in regard to pink bollworm (40 Stats., 374), a menace to cotton, which is as follows:

"On account of the menace to cotton culture in the United States arising from the existence of the pink bollworm in Mexico, the Secretary of Agriculture in order to prevent the establishment and spread of such worm in Texas and other parts

of the United States, is authorized to make surveys to determine its actual distribution in Mexico; to establish, in co-operation with the States concerned, a zone or zones free from cotton culture on or near the border of any State or States adjacent to Mexico; and to co-operate with the Mexican government or local Mexican authorities in the extermination of local infestations near the border of the United States."

Provisions also are contained in the statutes for the preparation and issue periodically of farmers' bulletins (34 Stats., 690), for the investigation and demonstration within the United States to determine the best method of obtaining potash on a commercial scale (39 Stats., 465), and for many other objects of real or supposed interest to the agricultural interests of the country.

Indeed, so greatly have the activities of the Department of Agriculture been increased and diversified in recent years that its disbursements of appropriations made by Congress for purposes within its jurisdiction reached in 1917 the sum of $29,587,148.95, and in 1918 the sum of $45,759,461.46. The last mentioned sum included the following amounts:

For stimulating agriculture and facilitating distribution of products	$6,349,055.19
Plant industry expenses.....	2,099,749.88
Purchase of seeds	245,270.98

None of these objects is within the expressed powers of Congress. They rest for their authority on the power to levy taxes to provide for the common defence and promote the general welfare of the Union, and to appropriate moneys so raised to such purposes.

It cannot be denied that Congress, if it chose, instead of accomplishing the purposes of the Farm Loan Act by the mechanism of the different classes of corporations

authorized by it, might have appropriated moneys to be raised by taxation, or provided for the annual issue and sale of government bonds, the proceeds realized in either case to be loaned out on farm mortgages, under the same restrictions as to interest, terms of repayment, etc., as those contained in the Farm Loan Act, under the direct administration of the Treasury or of any other department of the United States Government.

The vital importance to the nation of encouraging the development of its agricultural resources has been abundantly demonstrated during the recent war. It is equally important to the immediate future. No satisfactory development will be possible unless the farmers can secure needed moneys at moderate rates of interest and on easy terms of repayment. The ordinary banks of issue and discount cannot bear this burden. The rates and terms exacted by the great moneyed and insurance corporations, even if the funds at their disposal were adequate—which they are not—are more onerous than those which the government through the mechanism of the Farm Loan Act can provide. There is no public purpose more vital to the entire nation than that which moved Congress to the enactment of this law. The appellant wholly misses its object and the great public importance of its enactment, in his imperfect and prejudiced interpretation of its purpose and meaning. The *main* purpose of the agencies created by the act is the performance of the great governmental function of aiding in the stimulation and development of the agriculture of the country; the private and proprietary features of the corporations authorized, with their closely restricted possible profits, are but incidental and secondary.

II.

Having the power to raise money for the purposes under consideration by taxation or borrowing, and to apply it directly, through the Treasury Department or any other department of the Government selected for the purpose, Congress may accomplish the same ends through corporate instrumentalities adapted to or created for the purpose.

Congress is the exclusive judge of the method of accomplishing these ends. It may create corporations empowered to raise the necessary funds by stock subscription bond issue or deposits, to be loaned on farm mortgages, regulating the method of conducting the business so as to ensure its successful prosecution, and aiding, so far as it may deem expedient, by the loan of government funds or credit. This it first attempted through the National Banking Associations and the Federal Reserve Banks. The inadequacy of that machinery being recognized, the system embodied in the Farm Loan Act was adopted.

(*a*) Since the great cases of

> *McCulloch* v. *Maryland*, 4 Wheat., 316, and
> *Osborn* v. *Bank*, 9 Wheat., 738,

the power of Congress to create corporations to carry out any of its powers no longer can be questioned.

The power was held to be included in the right of any sovereign government which is empowered to do a particular act and has imposed upon it the duty of performing that act, to be allowed to select the means according to the dictates of reason.

In the *McCulloch* case, the Chief Justice said:

"We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional" (p. 421).

"The Congress of the United States, being empowered by the Constitution to regulate commerce among the several States, and to pass all laws necessary or proper for carrying into execution any of the powers specifically conferred, may make use of any appropriate means for this end. As said by Chief Justice MARSHALL, 'The power of creating a corporation, though appertaining to sovereignty, is not, like the power of making war, or levying taxes, or of regulating commerce, a great, substantive and independent power, which cannot be implied as incidental to other powers, or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished.' Congress, therefore, may create corporations as appropriate means of executing the powers of government, as, for instance, a bank for the purpose of carrying on the fiscal operations of the United States, or a railroad corporation for the purpose of promoting commerce among the states." GRAY, J., in *Luxton* v. *North River Bridge Co.*, 153 U. S., 525, 529.

In that case it was held (p. 530) that

> "although Congress may, if it sees fit and as it has often done, recognize and approve bridges erected by authority of two States across navigable waters between them, it may, at its discretion, use its sovereign powers, directly or through a corporation created for that object, to construct bridges for the accommodation of interstate commerce by land, as it undoubtedly may to improve the navigation of rivers for the convenience of interstate commerce by water."

(*b*) The circumstance that capital stock of the Federal Land Banks may, and that of the Joint Stock Land Banks must be subscribed and held by private individuals, and that profits realized in the business of each may be distributed among such shareholders, does not make the enterprise a private, not a public one, nor restrict the powers of Congress over the corporations, their property or business.

In the First and Second Banks of the United States, the government owned about one-fifth of the capital stock, the remaining four-fifths being held by the public. None of the stock of the Bank of England is owned by the British Government. "The Operation of the New Bank Act, 1914," by Conway & Patterson, p. 39.

The constitutionality of the act creating the United States Bank was upheld upon the ground that it was created for public purposes, and was adopted by Congress as an expedient method of exercising the powers vested in it to lay and collect taxes, to borrow money, etc.; that the powers given to the Congress implied ordinary means of execution, and that a corporation was a convenient, a useful, and an essential instrument in the prosecution of the fiscal operations of the government. See *Osborn* v. *Bank*, 9 Wheat., 738, 860.

Answering the question, why it is that Congress can incorporate or create a bank, MARSHALL, C. J., said (p. 861):

> "This question was answered in the case of *M'Culloch* v. *The State of Maryland*. It is an instrument which is 'necessary and proper' for carrying on the fiscal operations of the government."

The national banks authorized to be established under the Act of Congress of June 3rd, 1864, were to be formed by private individuals who should subscribe and hold the stock and distribute among themselves by way of dividends all the profits of the enterprise. Yet their constitutionality was upheld, resting, as the Supreme Court said in *Farmers' National Bank* v. *Dearing*, 91 U. S., 29, on the same principle as the act creating the Second Bank of the United States:

> "The national banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of necessity which existed for creating them, Congress is the sole judge" (pp. 33-34).

Davis v. *Elmira Savings Bank*, 161 U. S., 275;

Owensboro National Bank v. *Owensboro*, 173 U. S., 664;

Easton v. *Iowa*, 188 U. S., 220;

to the same effect.

(*c*) Congress is the sole judge of the extent and measure of the powers to be conferred upon the banks or other corporations which it creates to carry out purposes which it might constitutionally accomplish by other

methods. The fact that the stock of such corporations is to be subscribed and held by private parties is wholly immaterial.

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."
>
> MARSHALL, C. J., in *M'Culloch* v. *Maryland*, 4 Wheat., 316, 421.

In *Easton* v. *Iowa* (*supra*), the conclusion was reached that, as Congress had power to create a system of national banks, it was the judge as to the extent of the powers which should be conferred upon them, and had the sole power to regulate and control the exercise of their operations. The circumstance that the stock of the national banks was to be subscribed and owned by private individuals, in all those cases was regarded as entirely irrelevant to the consideration of the question whether or not Congress had power to erect and protect them.

Appellant's contention that Congress has no power to provide for the organization, by private individuals for private profit, of private corporations, with power to issue the obligations of such private corporations, etc., exempt from taxation, need not be disputed if there were no other consideration involved. But where such corporations, so empowered, as in the case of national banks, or in the present instance, are authorized by Congress for some public governmental purpose as well, their legality is unquestionable. In its application to the Federal Farm Loan System, the contention is completely met by

the following language from the opinion of Chief Justice MARSHALL in *Osborn* v. *Bank*, 9 Wheat., 738, 859:

> "The foundation of the argument in favor of the right of a State to tax the bank, is laid in the supposed character of that institution. The argument supposes the corporation to have been originated for the management of an individual concern, to be founded upon contract between individuals, having private trade and private profit for its great end and principal object. * * * But the premises are not true. The bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation, created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connection with the government is admitted; but the bank is not such an individual or company. It was not created for its own sake, or for private purposes. It has never been supposed that Congress would create such a corporation. The whole opinion of the court, in the case of *M'Culloch* v. *The State of Maryland*, 4 W., 316, is founded on, and sustained by, the idea that the bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the government of the United States.' It is not an instrument which the government found ready made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only. It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the government are effected, it is also trading with individuals for its own advantage. The appellants endeavor to distinguish between this trade and its agency for the public, between its banking operations and those qualities which it possesses in common with every corpora-

> tion, such as individuality, immortality, etc. While they seem to admit the right to preserve this corporate existence, they deny the right to protect it in its trade and business."

The Court, however, demonstrated and held that the power of Congress extended over the faculties, trade and occupation of the bank, as well as its corporate existence; that the trade of the bank was essential to its character as a machine for the fiscal operations of the government, and, therefore, must be as exempt from State control as the actual conveyance of the public money.

> "National banks," said the Court, in *Davis* v. *Elmira Savings Bank*, 161 U. S., 275, 283, "are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States."

And in *Easton* v. *Iowa*, 188 U. S., 220, 229, it was said:

> "Having due regard to the national character and purposes of that system, we cannot concur in the suggestions that national banks, in respect to the powers conferred upon them, are to be viewed as solely organized and operated for private gain."

The conclusion announced was "upon principle and authority," that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations.

(*d*) The banks of the Federal Farm Loan System, like those of the National Banking System, are public corporations, "created for public and national purposes." Their creation is not authorized for their own sakes or for private purposes. Their incorporation, government

and operations are under strict federal control. They are called into existence to accomplish the great national purposes described in the title to the act, and to relieve the national banks of a character of fiscal operation which, though capable by law of discharge by such banks, can better be performed by banks especially organized for its conduct. The capital and resources of a bank of deposit and discount, from the nature of its business, must be kept fluid; the capital and resources of land banks—*Crédits Fonciers*—must be more static; the credits must be for longer periods than commercial credits can be; the security in its nature cannot be as realizable as ordinary banking collateral. In order that the commercial business of the country may be advantageously conducted, banking facilities must be provided which shall offer to commerce a flexible system of credits and avoid stringent monetary conditions. The merchant and the trader must be able to discount paper and secure advances for limited periods on fair collateral at moderate rates of interest. The national banks and the Federal Reserve System, operating under governmental control, not ownership, have provided these facilities.

In order that the agricultural business of the country may be advantageously conducted, banking facilities must be provided which shall afford the farmers the means of getting moneys for the improvement and development of their farms on the security of farm mortgages at reasonable rates of interest, repaying the loan upon an amortization plan which will enable the farmer to meet the obligation out of the enhanced profits of his industry distributed over a reasonable period of years. Private enterprise has failed to meet this need. Only the government can provide it. Its first attempt to do so through the National Banking System has been referred to. The difficulty of meeting the demands of commerce and those of agriculture through the same agency, led to the enact-

ment of the Farm Loan Act. Under this Act, the profits of the enterprise are more limited than under the National Bank Act; but in order to induce capital to be devoted to this use with such limited returns as are permitted, the farm mortgages taken and the bonds issued are exempted from taxation, and in the case of the Joint Stock Land Banks the capital stock is put on the same footing as regards State and local taxation, as the stock of National Banking Associations. Thus, the burden of furnishing the great sums required to the successful attainment of the end in view is distributed, instead of falling directly upon the taxpayers, as it would were Congress to apply funds raised by direct taxation to the same ends.

(*c*) Appellant assumes our argument to be that "as Congress can, in some respects, legislate concerning agriculture, it has the implied power to appropriate money therefor. From this, it has been suggested that the act might be sustained by treating it as an appropriation of money for the public welfare." This reasoning, he contends, is contrary to the principles settled in *Kansas* v. *Colorado*, 206 U. S., 46, where "it was decided that there could not, from the general welfare clause, or any other provision of the Constitution, be implied any power in Congress to reclaim arid land." (Ap. Brief., p. 45.)

Here, again, the appellant fails to grasp our real contention, which is that, having the *express* power to raise and appropriate moneys for the public welfare, which includes the great agricultural needs of the nation, Congress instead of directly appropriating to those purposes moneys raised by taxation or borrowing, may create any machinery which it deems appropriate to raise and apply moneys to those objects. In aid of that machinery, it authorizes the advance of moneys from the Treasury, in the purchase of bonds or stock of the

Federal Land Banks, and the protection from taxation of bonds of both classes of banks, which it makes instrumentalities of government in the accomplishment of the great public purpose of the Act.

Nothing to the contrary was established by *Kansas* v. *Colorado.*

That case involved no question of the constitutional exercise by Congress of its legislative power. The two States, parties to the suit, were concerned in a controversy respecting the right of Colorado to divert waters of the Arkansas River for the irrigation of lands within its territory, which Kansas claimed prevented the natural and customary flow of the river into and through its territory. The Attorney-General of the United States filed on behalf of the United States an intervening petition claiming a right to control the waters of the river to aid in the reclamation of arid lands owned by the United States. It was not averred that the diversion of the waters tended to diminish the navigability of the river, but it was asserted that there was a superior authority and supervisory control in the United States over the States, to regulate the flow and appropriation of the river. The argument was that, in view of the conflict of interest between two or more states, the Nation, as incident to its inherent sovereignty, had the implied power to intervene and control. The Court pointed out that there was involved no question of the power of the National Government over the navigability of a stream; that the Government distinctly asserted that the Arkansas River was not and never had been practically navigable, and nowhere claimed that any appropriation of the waters by Kansas or Colorado affected its navigability.

> "It rests its petition of intervention," said Mr. Justice BREWER, "upon its alleged duty of legislating for the reclamation of arid lands; alleges that in or near the Arkansas River, as it runs through

> Kansas and Colorado, are large tracts of those lands; that the National Government is itself the owner of many thousands of acres; that it has the right to make such legislative provision as in its judgment is needful for the reclamation of all these arid lands and for that purpose to appropriate the accessible waters. * * * In other words, the determination of the rights of the two States *inter sese* in regard to the flow of waters in the Arkansas River is subordinate to a superior right on the part of the National Government to control the whole system of the reclamation of arid lands. That involves the question whether the reclamation of arid lands is one of the powers granted to the General Government" (206 U. S., at pp. 86-87).

This question was answered in the negative. It was held that each State had full jurisdiction over the lands within its own borders, including the beds of streams and other waters, and the complaint of one State as to the effect of action by the other was held to present a justiciable controversy within the jurisdiction of the Supreme Court. The question there considered was totally different from the one at bar. Here, we are dealing with the exercise by Congress of its legislative power; there, the Executive branch of the Government sought to intervene as "steward of the public welfare," asserting an implied power in Congress which was nowhere expressed, and which this Court held was not properly to be implied from any express power. The fact that the United States owned a large amount of public land which was arid was one of the reasons alleged for the intervention, but the actual position taken was, that there was an implied power in the United States to govern the reclamation of arid lands because of the importance of that reclamation. The case did not involve in any aspect the question of the right of the Federal Government directly or indi-

rectly to appropriate money in aid of agriculture. The same question would be presented here, if the Government were claiming the power to legislate in regulation of the method of farming within the States, instead of merely creating machinery to raise and lend moneys to farmers on reasonable terms, to encourage them to develop and increase the agricultural productivity of the country, upon which the public welfare so greatly depends.

(*f*) Having provided for the creation of these land banks with the purpose above described primarily in view, Congress has also adapted them to other legitimate federal purposes.

In *Easton* v. *Iowa*, 188 U. S., 220, the Court (SHIRAS, J.), said (p. 238):

> "Our conclusions, upon principle and authority, are that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations."

Section 6 of the Farm Loan Act provides that:

> "All Federal land banks and joint stock land banks organized under this Act, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. And the Secretary of the Treasury shall require of the Federal land banks and joint stock land banks thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safe-keeping and

> prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government. No Government funds deposited under the provisions of this section shall be invested in mortgage loans or farm loan bonds."

By Section 32, the Secretary of the Treasury is empowered, upon the request of the Farm Loan Board, to make deposits of public moneys for the temporary use of any Federal Land Bank, upon terms and conditions specified in the section.

Having in mind also, the vast demands upon the national treasury imposed by conditions resulting from the war, and the need of creating constantly widening markets for United States bonds, the title to the Farm Loan Act expressly states one of its purposes to be "to furnish a market for United States bonds." Provisions are found in Sections 5, 6, 13 (Eighth), 18 and 22 for investment in these bonds, as well as for the purchase by the Treasury Department of bonds issued by the banks of the Farm Loan System.

Banks of deposit are they as well, although limited in the class of depositors with whom they may deal (Sec. 14).

If any portion of the business which these land banks are authorized to conduct be within the power of Congress to authorize, the courts may not segregate those objects from other corporate authority conferred and, while upholding part, condemn the rest. All alike must be regarded as authorized.

Judge Story (2 Com., Sec. 1269), in discussing the power of Congress to create a bank as an appropriate means of carrying into effect some of the enumerated powers of government, says:

> "In regard to the faculties of the bank, if congress could constitutionally create it, they might

> confer on it such faculties and powers as were fit to make it an appropriate means for fiscal operations. They had a right to adapt it in the best manner to its end. No one can pretend that its having the faculty of holding a capital; of lending and dealing in money; of issuing bank notes; of receiving deposits; and of appointing suitable officers to manage its affairs; are not highly useful and expedient and appropriate to the purposes of a bank. * * * No man can say that a single faculty in any national charter is useless, or irrelevant or strictly improper, that is conducive to its end as a national instrument. Deprive a bank of its trade and business, and its vital principles are destroyed. * * * All the powers given to the bank are to give efficacy to its functions of trade and business."

First National Bank v. *Union Trust Co.*, 244 U. S., 416, involved the validity of provisions in the Federal Reserve Bank Act (38 Stats., 251, 262), which authorized national banks to act as trustee, executor, administrator or registrar of stocks and bonds.

Quoting from *Osborn* v. *Bank*, 9 Wheat., 738, WHITE, C. J., said:

> "The ruling in effect was that although a particular character of business might not be when isolatedly considered within the implied power of Congress, if such business was appropriate or relevant to the banking business the implied power was to be tested by the right to create the bank and the authority to attach to it that which was relevant in the judgment of Congress to make the business of the bank successful. It was said: 'Congress was of opinion that these faculties were necessary, to enable the bank to perform the services which are exacted from it, and for which it was created. This was certainly a question proper for the consideration of the national legislature' (p. 864)" (p. 420).

The Court said that the test of the existence of the power to grant the particular functions in question must be met by considering the Bank

> "as created by Congress as an entity with all the functions and attributes conferred upon it" (p 424).

It was held that a determination could not be made as to a particular power upon a separation of the particular functions from the other attributes and functions of the bank. Referring to *McCulloch* v. *Maryland*, 4 Wheat., 316, and *Osborn* v. *The Bank*, 9 Wheat., 738, it was further said:

> "What those cases established was that although a business was of a private nature and subject to state regulation, if it was of such a character as to cause it to be incidental to the successful discharge by a bank chartered by Congress of its public functions, it was competent for Congress to give the bank the power to exercise such private business in co-operation with or as part of its public authority. Manifestly this excluded the power of the State in such case, although it might possess in a general sense authority to regulate such business, to use that authority to prohibit such business from being united by Congress with the banking function, since to do so would be but the exertion of State authority to prohibit Congress from exerting a power which under the Constitution it had a right to exercise" (p. 425).

The Farm Loan Act has been accurately described as follows:

> "The act creates an organization for pecuniary aid alone; that is, it is concerned only with the application of money. There is no attempt to conduct agricultural activities within the State, to undertake the management of farm property, to

manage or control any internal concerns of the State, or to interfere with the exercise of the authority of the States over lands within their borders."

Every principle upon which the constitutionality of the National Banking Act has been upheld applies with equal force to the Farm Loan Act.

III.

The provisions exempting from taxation, State or Federal, the mortgages executed to Federal Land Banks or Joint Stock Land Banks, and Farm Loan bonds issued by either class of banks under the provisions of the Farm Loan Act, and the income derived therefrom, are within the powers of Congress to enact.

Having the power to create these corporations and to provide through their instrumentality for the purposes mentioned, Congress may protect them by exempting their operations from taxation to the extent it deems necessary. This has been done by Section 26 of the act above quoted. This provision of the statute exempts Farm Loan Banks and National Farm Loan Associations, including their capital and reserve or surplus and the income derived therefrom, from all taxation, except upon their real estate; exempts first mortgages executed to Federal Land Banks and Joint Stock Land Banks, and farm loan bonds issued by either class of said banks and the income derived therefrom, from all taxation, federal and state, declaring such mortgages and bonds to be instrumentalities of the Government of the United States. Shares of stock in joint stock land banks are left subject

to taxation in like manner as the stock of national banks.

Granting the power of Congress to incorporate these institutions, the power to protect the property and the business and the instrumentalities of the banks from State taxation rests upon elementary principles. The power to tax is the power to destroy (*McCulloch* v. *Maryland*, 4 Wheat., 316, 431; *Loan Association* v. *Topeka*, 20 Wall., 655, 663; *Weston* v. *Charleston*, 2 Pet., 449). If the States were left free to tax mortgages taken by the Farm Loan Banks, and the bonds issued by them, private capital would not be attracted to these institutions. The margin of possible return would be much too small.

That a State may not by taxation or otherwise hamper the operation of an agency of the Federal Government has been settled since the decision in *McCulloch* v. *Maryland*, 4 Wheat., 316. See *Farmers and Mechanics Savings Bank* v. *Minnesota*, 232 U. S., 516, 521. The power of the States to tax shares in National Banks depends upon the permission to do so granted by Congress. A tax upon farm mortgages taken, or Farm Loan bonds issued by Federal Land Banks or Joint Stock Land Banks, would be a tax on the operations of these banks and not only would hamper, but might wholly destroy their power to carry out the purposes of Congress. These securities are adopted by Congress as instrumentalities to accomplish the purpose of stimulating and developing the great agricultural resources of the Nation. Even in the absence of express exemption, it is doubtful if the States might tax their operations (*Farmers and Mechanics Savings Bank* v. *Minnesota*, 232 U. S., 516). But Congress has removed all doubt by the clear enactment of exemption.

In *Farmers and Mechanics Savings Bank* v. *Minnesota*, 232 U. S., 516, it was held that municipal corporations established in territories of the United States are

instrumentalities of the Federal Government and therefore the States may not tax bonds issued by them.

In *Fidelity and Deposit Co.* v. *Pennsylvania*, 240 U. S., 319, plaintiff, a Maryland surety company, claimed that in becoming a surety upon bonds required by the United States, it acted as a federal instrumentality and was not subject to State taxation on the premiums received. Congress had not attempted to exempt it from such taxation. While it was recognized that the tax was an exaction for the privilege of doing business, and it was conceded that "a State may not directly and materially hinder the exercise of Constitutional powers of the United States by demanding in opposition to the will of Congress that a Federal instrumentality pay a tax for the privilege of performing its functions," it was held that "mere contracts between private corporations and the United States do not necessarily render the former essential governmental agencies and confer freedom from state control" (p. 322). The Court also pointed out that Congress had not attempted to exempt such corporation from taxation.

On the other hand, in *Indian Territory Illuminating Oil Co.* v. *Oklahoma*, 240 U. S., 522, oil leases of lands in Oklahoma made by an Indian tribe under the authority of acts of Congress were held to be under the federal protection, and the lessee a federal instrumentality, and it was decided that the State could not tax the interest of the lessee in the leases directly, and could not tax the capital stock of the corporation owning them. A tax upon the lease was held to be a tax upon the power to make the lease. *Choctaw & Gulf R. R.* v. *Harrison*, 235 U. S., 292, was relied upon. There it was held that the agreement between the United States and certain Indian tribes ratified by Act of Congress (30 Stats., 495, 510), imposed

upon the United States a definite duty in respect to opening and operating the coal mines upon their lands. The appellant railroad company, in conformity with the provisions of the Act, had taken leases of certain of the mines, obligating itself to mine annually specified amounts of coal and to pay agreed royalties, and was therefore held to be the instrumentality through which the Government was carrying its obligations into effect. Such instrumentality, it was held, could not be subjected to an occupational or privilege tax by the State.

In *Farmers' National Bank* v. *Dearing*, 91 U. S., 29, it was held that national banks were not subject to State statutes regulating the amount of interest which might be charged by a bank doing business within the State upon loans made by it; that such banks were instruments designated to be used to aid the Government in the administration of an important branch of the public service; that they were a means appropriate to that end, and that of the degree of the necessity which existed for creating them, Congress was the sole judge. The Court, per SWAYNE, J., said:

> "Being such means, brought into existence for this purpose and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Anything beyond this is 'an abuse, because it is the usurpation of power which a single State cannot give.' Against the national will 'the States have no power, by taxation or otherwise, to retard, impede, burthen, or in any manner control, the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. • • • The power to create carries with it the power to preserve. The latter is a corollary from the former" (p. 34).

To the same effect, *Owensboro National Bank* v. *Owensboro,* 173 U. S., 664, WHITE, J., said (p. 668):

> "It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, were it not for the permissive legislation of Congress."

See also *Easton* v. *Iowa,* 188 U. S., 220; *Bank of California* v. *Richardson,* 248 U. S., 476.

Mercantile Bank v. *New York,* 121 U. S., 138, involved a consideration of the application of a tax law of New York to national banks. Speaking of the National Banking Act, the Court said:

> "The key to the proper interpretation of the act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions, in order to provide a uniform and secure currency for the people, and to facilitate the operations of the Treasury of the United States. The capital of each of the banks in this system was to be furnished entirely by private individuals; but, for the protection of the government and the people it was required that this capital, so far as it was the security for its circulating notes, should be invested in the bonds of the United States. These bonds were not subjects of taxation; and neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, being exempted from the power of the States in this respect, because these banks were means and agencies established by Congress in execution of the powers of the government of the United States. It was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the

authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the States from imposing such a burden as would prevent the capital of individuals from freely seeking investments in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, and capital in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden. The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy" (p. 154).

See also *Bank of California* v. *Richardson*, 248 U. S., 476.

The power of Congress to exempt the operations of the Land Banks as it has done is therefore amply sustained by authority. The statute carefully follows the precedents set in the case of National Banks.

IV.

There is no difference, so far as the constitutional exercise of congressional power to incorporate is concerned, between the Federal Land Banks and the Joint Stock Land Banks.

So deeply was Congress impressed with the necessity of without delay making provision for financing the agricultural needs of the country on a comprehensive scale, that it created two different species of agencies to accomplish its purpose, and authorized and directed the Treasury Department in the first instance to advance the capital necessary to the organization of one species, viz.: the Federal Land Banks, while leaving the other species, the Joint Stock Land Banks, wholly dependent for their capital on voluntary private subscription. The House Committee on Banking and Currency in reporting the bill [Report No. 630, *vide supra*] submitted the following observations concerning the

"Joint Stock Land Banks.

> "The universal experience of foreign countries has demonstrated that profit-seeking organizations engaged in farm-mortgage business have firmly established themselves even where co-operative associations are strongest and most prosperous. These companies have developed and prospered side by side and in competition with the co-operative societies. It is manifest, therefore, that they render useful service to agriculture in those countries. As authorized in this bill, their capital is derived wholly from private subscription. They must begin business with a minimum paid-up capital of $250,000. Their operations are confined to the territory of a single State. They can not engage in any other business than that of making farm-mortgage loans and is-

suing bonds. They can not issue bonds at a rate higher than 5 per cent. nor make a mortgage interest rate in excess of 1 per cent. above the bond rate. They are not limited as to the purposes for which the money loaned may be used.

"In practically every other particular they are subjected to the same restrictions and conditions as Federal farm land banks and are subject to the strictest Government supervision" [pp.9-10].

Appellant does not give the sources of his assertions concerning the efforts to market the farm loan bonds in 1917, and the reasons for the alleged failure to sell them to the public at that time. There is nothing of the kind in the record. The entry of America into the war in April, 1917, would, however, seem to furnish adequate reason for hesitation by the bond-investing public to buy these bonds. After the United States entered the war, by the Amendment of 1918, the Treasury Department was authorized during the years 1918 and 1919 to purchase bonds issued by the Federal Land Banks to an amount not exceeding $100,000,000 in each year. Doubtless this legislation was needed to tide the farm loan system over the period when the government was selling billions of dollars in bonds to carry on the war. The Farm Loan bonds could hardly compete in the market during that period with government bonds, and the Treasury Department naturally would not desire them to do so. The bill of complaint, however, shows that the Treasury has purchased and now holds only 135 millions out of $285,600,000 of bonds issued by the Federal Land Banks, or slightly less than one-half, and $8,265,809 out of the $8,892,130 aggregate par value of their capital stock.

Even in the face of that direct governmental appropriation in aid of the Federal Land Banks, the Joint Stock Land Banks have justified their creation; twenty-seven have been organized through individual effort, with

an aggregate capital of $8,000,000, almost equal to that of the Federal Land Banks, and $41,000,000 of their bonds have been sold to and now are held by the public.

Indeed the success of these Joint Stock Land Banks is the principal cause of the attack upon them. The private corporations which have been engaged in lending moneys on farm mortgages at rates ranging from 6 to 10 per cent. per annum [see Schedule annexed to brief of United States as *Amicus Curiae*] naturally have not regarded with satisfaction the creation and successful conduct of agencies which offer money at not exceeding 6 per cent. It does not require a stretch of imagination to perceive those influences back of the attack upon the Act in the courts, as well as the effort to procure from Congress a repeal of the exemption from taxation of the Farm Loan Bonds issued by Joint Stock Land Banks, referred to in Appellant's Brief. How well the system has worked in carrying out the intentions of Congress is shown in the last annual report of the Secretary of the Treasury for 1919, an extract from which is annexed to this brief (pp. 75-79, *infra*).

It appears in the Bill, that with the direct advance of government moneys to the amount of only $143,265,809, there has been raised to be loaned out to farmers for agricultural development the sum of $335,492,130; the difference, or $192,226,321, having been contributed by the public through the purchase of bonds and stock.

The intent of the Act is that the stock of the Federal Land Banks, subscribed by the government, gradually shall be retired, as equal amounts are taken by individuals or National Farm Loan Associations.

Until that is accomplished, and all of their bonds held by the government are paid or purchased, the government retains control of the Board of Directors, and narrowly regulates the operations of the banks.

The regulatory provisions, from which the Joint Stock Land Banks are expressly exempted by Section 16, are those which were especially designed for the protection of the government's investment in the Federal Land Banks.

The Appellant misreads the Act when he contends that the Joint Stock Land Banks can loan to anyone on farm lands in unlimited amounts, and without any restrictions as to the use to be made of the land or of the money borrowed thereon. (Brief, pp. 12, 29, 37, 76.)

These banks are expressly made subject to the provisions of paragraph fifth of Section 12, viz.:

> "Fifth. No such loan shall exceed fifty per centum of the value of the land mortgaged, and twenty per centum of the value of the permanent, insured improvements thereon, said value to be ascertained by appraisal, as provided in section ten of this Act."

Such valuation is to be made by one of the Land Bank appraisers authorized by the Act.

Appellant also falls into error in stating that neither the Government, farm association, nor land bank has any connection with the Joint Stock Banks, nor any interest therein. (Brief, p. 29.) The fact is the Government has the most intimate connection. No Joint Stock Land Bank can be organized without the approval of the Farm Loan Board, and in all of its operations, it is subject to the close regulation of the Farm Loan Board. Section 17 enacts that the Federal Farm Loan Board shall have power

> "(i) to exercise general supervisory authority over the federal land banks, the national farm loan associations, and the joint stock land banks herein provided for."

Nor is it true, as Appellant states, that

> "the sole corporate purposes are to loan, in unlimited amounts, on farm mortgage security and issue and sell collateral trust farm loan bonds secured thereby. * * * In plain words, its sole business is to make farm loans without restrictions. * * * It is to have the same powers and to be subject to the restrictions and conditions imposed on land banks so far, but not otherwise, as same may be applicable, but practically every feature which led to or could justify the organization of land banks is declared to be inapplicable." (Brief, p. 29.)

As already pointed out, loans by Joint Stock Land Banks are, by Section 16, left expressly subject to the provisions of paragraphs 2nd, 3rd, 5th, 8th, 9th and 11th of Section 12, as well as to the restrictions expressed in Section 16. They can make no loans which are not secured by first mortgages on farm lands within the state in which the bank has its principal office, or within some one state contiguous to that state. No such loan shall exceed fifty per cent. (50%) of the appraised value of the land mortgaged and twenty per cent. (20%) of the value of the permanent insured improvements thereon, and no such mortgage can be used as collateral security to the issue of a farm loan bond by a Joint Stock Land Bank without the approval of the Farm Loan Board (Sec. 18). The only material particular in which the Joint Stock Land Banks have greater freedom of action than the Federal Land Banks is respecting the purposes to which the money loaned may be applied—a privilege which is qualified by the requirement in Section 12, paragraph 8, that

> "every applicant for a loan under the terms of this act shall make application upon a form to be prescribed for that purpose by the Federal Farm

> Loan Board, and such applicant shall state the objects to which the proceeds of said loan are to be applied, and shall afford such other information as may be required,"

and by the power in the Federal Farm Loan Board to grant or refuse authority to make any specific issue of farm loan bonds based upon any given collateral.

The differences between the powers, liabilities and functions of the two classes of banks are not of such a nature as to bring one within and to leave the other outside of the permissible exercise of congressional power.

It is true that the act authorizes and requires the United States to subscribe in the first instance to so much of the capital stock of the Federal Land Banks as may not be subscribed by individuals, corporations, State governments, or National Farm Loan Associations, within the time limited for subscriptions by the Farm Loan Board; but this subscription is only in the nature of an advance, and whenever subscriptions to the stock of any Federal Land Bank by National Farm Loan Associations shall amount to $750,000, the bank is required to apply 25 per cent. of all sums subsequently subscribed to the retirement of the original stock (Sec. 5). The Act contemplates that the associations of borrowers on farm mortgage security, known as National Farm Loan Associations, by their subscriptions to the stock of Federal Land Banks, required as conditions to procuring mortgage loans, shall become the stockholders of such banks. While no personal liability for the debts of the Federal Land Banks is imposed upon their stockholders, shareholders of the National Farm Loan Associations are made individually responsible, equally and ratably, for all contracts, debts and engagements of such Associations, to the extent of the amount of the stock owned by

them, at the par value thereof, in addition to the amount paid in and represented by their shares. This double liability, therefore, is an additional security to the Federal Land Banks for the repayment of moneys loaned on farm loan mortgages through Farm Loan Associations, and thus furnishes an additional security for the payment of the bonds issued against such mortgages as collateral. For that reason, probably, no double liability is imposed upon the stockholders of Federal Land Banks. On the other hand, the Joint Stock Land Banks lend directly to farmers on mortgages of their lands, which mortgages are then used as collateral for bonds issued by the Joint Stock Land Banks, and the added security for their repayment is furnished by imposing upon the stockholders in these banks a double liability for their debts similar to that of stockholders in national banks.

If, as we contend, Congress, having undoubted power to appropriate money raised by taxation or by borrowing on the credit of the United States, for the purpose of stimulating agriculture, by loaning it to farmers on the security of farm loan mortgages, also has the power to accomplish the same purpose by creating corporations authorized to lend money on the same character of security and to issue and sell to the public bonds secured by farm mortgages, Congress must be the sole judge of the nature of the corporate organization, and of the extent and character of the aid the government shall give to enable such corporations successfully to accomplish the purpose of their creation.

Therefore, it is immaterial whether or not the Treasury Department is empowered temporarily or permanently to subscribe to the stock of the Federal Land Banks, and not to that of the Joint Stock Land Banks, or to purchase Farm Loan bonds issued by the former, but not those issued by the latter. If the end sought to be attained, namely, the stimulation and encouragement of

the Nation's agriculture, be legitimate, and within the scope of the general welfare for which by the Constitution Congress is expressly empowered to levy taxes and appropriate moneys; if the Federal Farm Loan System embodied in the Act is appropriate, and plainly adapted to secure the application of moneys to that great end, then, the circumstance of governmental stock or bond holding in one case and not in the other, can have no bearing on the question of Congressional power. The validity of the legislation as to each class of banks, rests upon the fact that it is machinery adopted to accomplish the same end which Congress might attain by direct taxation and appropriation through ordinary governmental agencies.

V.

Whether or not the Land Banks of either class are properly designated as "banks," they are corporations which Congress had power to create to carry out a constitutional purpose.

Appellant, in his argument, first assumes what is not a fact, namely, that the main purpose of the agencies created by the act is not to perform any governmental function as distinguished from one which is strictly private (Ap. Brief, p. 9), and upon that erroneous assumption he bases his argument that Congress could not constitutionally create either class of banks. The title of the Farm Loan Act accurately describes the purpose of its enactment. Provision is made therein to secure to farmers capital for agricultural development by means of loans on farm mortgages at reasonable rates of interest and easy terms of repayment. A standard form of investment based upon farm mortgages is

created in the Farm Loan Bonds; rates of interest upon farm loans are equalized by the provision in Section 12, paragraph third:

> "No loan on mortgage shall be made under this Act at a rate of interest exceeding six per cent. per annum, exclusive of amortization payments."

A market for United States bonds is created by the permissive provisions in Section 13, paragraph 8, and in Section 22, and by the requirement of investment in Section 5, last paragraph. The bill of complaint shows that the Federal Land Banks hold $4,230,805, and the Joint Stock Land Banks $3,287,503, in United States bonds (Rec., p. 9).

The authority to create government depositaries and financial agents for the United States already has been exercised to the extent described in the bill (Rec., pp. 8, 10).

Appellant wholly misconceives our position when he says:

> "By assuming the scheme as one to do a *general* banking business, which each of such agencies is expressly prohibited (Sec. 13) from doing, it is sought to justify its adoption as an exercise of an implied *governmental* power."

No such argument was made on our part in the District Court, and none is made here. Nor is it true, as argued by Appellant, that "the main, chief and only substantial purpose is to use the system for the *private* or *proprietary* interests of borrowers and lenders" (Brief, p. 42).

Our position is that the great central purpose of the Act is the encouragement of agriculture in the United States by providing farmers with moneys necessary for its development upon the security of their farms, on rea-

sonable terms as to interest and repayment. That, having the power to accomplish that object by direct appropriation, Congress may adopt any other machinery which it deems appropriate to that end, and that for that purpose it has created two different species of corporations, investing them with adequate powers, aiding one class by direct stock subscription and by bond purchases, and both classes by protection against taxation; conferring upon both of them other powers necessary or convenient to the successful prosecution of their business, powers which in themselves, probably, might justify their incorporation. It is wholly immaterial whether or not these corporations be called "banks." They are corporations created by Congress to carry out a great public purpose. They have certain powers usually associated with banking institutions. They furnish credit to farmers in like manner as banks of deposit and discount furnish credit to persons engaged in commerce and industry. But no argument in favor of the power of Congress to create them is based upon the fact that they are called *banks*.

VI.

Congress might constitutionally have created both classes of banks to serve as depositaries of public moneys and financial agents of the government. That it chose also to empower them to loan moneys on farm mortgages, even if that were not within its power to grant, would not impair the legality of the incorporation, nor its jurisdiction to protect them against National or State taxation.

By Section 6 of the Act, the Secretary of the Treasury is authorized to designate both the Federal Land Banks and the Joint Stock Land Banks as depositaries of public moneys, and to employ any of them as financial agents of the government. It is of no consequence that this power has been so little exercised up to the present time. The entry of the United States into the war the year following the enactment of the Farm Loan Act, is a sufficient explanation for failure to put all of the provisions of the Act into effect. It is shown by the bill that the Treasury Department, under the authority of the amending act of 1918, did make deposits of substantial amounts in eight different Federal Land Banks, and it also appears in the bill (Rec., p. 10) that during the summer of 1918, three of the Federal Land Banks were designated as financial agents of the government for the making of seed grain loans to farmers in drought-stricken sections. It is not necessary that a financial agent of the government should be a bank of discount and deposit. What is required is, first, that such agent be an organization which may receive deposits where, for example, the money collected by the Internal Revenue authorities of the government may be deposited, such banks giving

security for the safekeeping of the deposits in like manner as national banks do; secondly, that it have an organization appropriate to the receipt and disbursement of government moneys. The Treasury Department is constantly paying out money in every State of the United States. It is disbursing public funds in carrying out the ordinary transactions of the government. For this purpose, it avails of many different agencies, and these Land Banks may, in given instances, be peculiarly adaptable to service of that character; as was the case when, in the summer of 1918, the government set aside $5,000,000 to loan in small amounts to farmers to enable them to buy seed grain. The bill of complaint shows that the three Land Banks designated made upwards of 15,000 loans of that character, aggregating in all more than $4,500,000 (Bill, p. 10). Such financial agencies also may be called upon from time to time by the Secretary of the Treasury to sell the temporary certificates of indebtedness of the government; that is, to go out and find purchasers for these temporary certificates, which are issued by the Treasury for the purpose of facilitating the operations of the United States Treasury between the times when taxes are being received. The United States Treasury often needs money at times when taxes are not due. Instead of borrowing it from banks, it issues temporary certificates of indebtedness bearing interest at four or five per cent., and calls upon banks of all kinds to assist in marketing such certificates. Some banks take them as investments, employing a portion of their deposits or of their capital for that purpose. Others sell to investors, who buy them. The farmers are investors. In many cases they might be reached through the Land Banks better than through the national banks, and it is thus readily apparent that this agency would be useful in circumstances of that character. These banks

also may be employed by the Secretary of the Treasury as financial agents for the purpose of selling War Savings Stamps and Thrift Stamps. It has been the experience of the Treasury Department that too many agencies for that purpose cannot be found in the country. They also may be employed in selling the bonds of the government, as was the case with the various Liberty Loans. It is of the utmost importance that every possible purchaser may be reached, and organizations of this description, dealing with farmers, may reach sources of investment which otherwise would not be attained. Congress obviously had in view these possibilities when it enacted in Section 6 the provision authorizing the Secretary of the Treasury to designate these two classes of corporations, to serve as depositaries of public money and as financial agents of the government. As time goes on and more banks are organized, they will become increasingly useful in assisting the Federal Government in the performance of its fiscal operations. If there were no other purpose than this for the creation of these corporations, could the Court say that Congress had exceeded its jurisdiction in permitting their formation?

Appellant has sought in his brief to question the motives of Congress in enacting the Farm Loan Act (Brief, pp. 7, 8, 13). On the one hand, he calls the title to the act misleading, and in another place, he appeals to the title as showing that it is not an appropriation act—which nobody has ever claimed that it was. What the appellees contend is, that Congress had full power to provide by appropriation for the accomplishment of the purpose which it has created the machinery of this act to accomplish in a different way. That the courts will not attempt to restrain the exercise of a lawful power by Congress on the assumption that a wrongful motive or pur-

pose has caused the power to be exercised, has been long settled. (*McCray* v. *United States*, 195 U. S., 27, 53-59; *Red "C" Oil Co.* v. *North Carolina*, 222 U. S., 380.)

In *Florida Central & Peninsular R. R. Co.* v. *Reynolds*, 183 U. S., 471, the Court said (p. 480):

> "We must assume the legislature acts for the best interests of the State. A wrong intent cannot be imputed."

In *Ellis* v. *United States*, 206 U. S., 246, HOLMES, J., delivering the opinion of the Court, said:

> "It is true that it [Congress] has not the general power of legislation possessed by the legislatures of the States, and it may be true that the object of this law is of a kind not subject to its general control. But the power that it has over the mode in which contracts with the United States shall be performed cannot be limited by a speculation as to motives" (p. 256).

VII.

This appeal challenges the validity of an Act of Congress which was framed after extensive enquiry, unusual study and full debate, for the purpose of adequately providing for a great public need. As Chief Justice MARSHALL said of the Act incorporating the Second United States Bank, this Act "did not steal upon an unsuspecting legislature and pass unobserved" (*M'Culloch* v. *Maryland*, 4 Wheat., 316, 402).

Millions of dollars have been invested by the public in reliance upon its provisions and upon the faith of the exemption from taxation held out by Congress as an inducement to investors. Seldom has a controversy been presented to this Court which threatens such far-reaching financial loss as would follow if the contention of the

Appellant were upheld. In such circumstance, it is submitted that the entire absence of Constitutional power in Congress must be clearly demonstrated before the Court would declare worthless the millions of securities sold on the faith and credit of an Act of Congress so deliberately and so carefully enacted. We most earnestly submit that not only has this want of power not been established, but that the contrary is clearly demonstrated, and therefore that the decree appealed from which dismissed the bill should be affirmed.

GEORGE W. WICKERSHAM,

W. G. McADOO,

Counsel for First Joint Stock Land Bank of Chicago, Intervenor-Appellee.

APPENDIX.

Extract from Annual Report of the Secretary of the Treasury (Hon. Carter Glass) for the year 1919, dated November 20th, 1919:

"The Federal farm-loan system has operated effectively and successfully during the past year, amply justifying the great purpose for which it was created and meeting the expectations of its advocates. The Federal land banks have continued to make loans to farmers at 5½ per cent. per annum, and the joint stock land banks at 6 per cent. All loans, as provided by the act, have been made on the amortization plan, the borrower making a fixed payment, annually or semi-annually, which is at least 1 per cent. in excess of the interest charge, such excess being applied on the principal. As the balance of the principal due decreases the proportion of this level payment absorbed by the interest charge correspondingly decreases and a constantly increasing balance is applicable to the extinguishment of the debt. This principle, while familiar to actuaries and statisticians, had not been applied in this country to individual mortgages to any appreciable extent prior to the enactment of the Federal farm-loan act in July, 1916. The great success of the farm-loan system has called attention to the advantages of this method of paying debts, and the application of the amortization plan to all mortgages, urban and rural, is now being actively urged by influential private organizations.

"During the 12 months ended September 30, 1919, loans were made by the Federal land banks to the farmers of the United States to the aggregate amount of $129,271,662, an increase of $10,742,839 over the corresponding period a year ago, and making a total of loans by the Federal land banks from the inception of the system in March, 1917, of $261,175,346. The subjoined table indi-

cates the amount of the loans made by each of the banks in the years referred to and in the aggregate:

District.	Federal land bank.	Loans made Oct. 1, 1917, to Sept. 30, 1918.	Loans made Oct. 1, 1918, to Sept. 30, 1919.	Aggregate of loans made from date of organization in March, 1917, to Sept. 30, 1919.
1.	Springfield, Mass..	$4,999,630	$4,738,200	$9,913,545
2.	Baltimore, Md....	4,323,150	5,277,550	10,401,600
3.	Columbia, S. C....	6,198,905	7,361,250	13,891,045
4.	Louisville, Ky.....	7,490,700	9,469,700	17,959,900
5.	New Orleans, La..	8,800,135	9,722,715	18,192,505
6.	St. Louis, Mo.....	8,166,065	12,149,270	20,895,940
7.	St. Paul, Minn....	17,380,500	14,886,100	33,605,900
8.	Omaha, Nebr.....	14,418,050	20,267,450	35,390,290
9.	Wichita, Kans.....	10,292,922	9,045,000	23,311,800
10.	Houston, Tex.....	11,264,287	16,885,787	28,666,561
11.	Berkeley, Calif....	7,315,800	6,019,400	14,065,400
12.	Spokane, Wash....	17,878,679	14,458,340	34,880,860
	Total.....	118,528,823	129,271,662	261,175,346

"There have been 27 joint stock land banks incorporated by private capital under the terms of the act, with aggregate capital of $8,500,000. Nineteen of these banks were incorporated during the past year, and therefore can not be said to be, as yet, in full and active operation. The loans made by the joint stock land banks aggregate $41,787,359, which added to the loans of the Federal land banks makes a total of $302,963,705 lent to farmers by all of the banks composing the system. The banks of this character have grown very strikingly in number and in volume of business during the past year. Owing to the fact that they were not established until after the Federal land banks, and that for some time there were only a few in operation, their loans represent only 14 per cent. of the total, but during one or more recent months they have transacted as high as 30 per cent. of the whole volume of business of the system. Notwithstanding this division of the field, the Federal land banks have done a larger volume of more desirable business than in the previous year, the membership of existing farm-loan associations has grown,

and over 600 new associations have been organized.

"A very gratifying feature of the year is the remarkable improvement in the financial position of the Federal land banks. During the first year of their existence, and part of the second year, they necessarily operated at a loss. This was inevitable, and was anticipated by the proponents of the system and those who were familiar with the business. The 12 banks opened in the spring of 1917 with an aggregate capital of $9,000,000, of which $8,892,130 was subscribed by the Government and $107,870 by individuals. Before the close of the first year over $600,000 of this original capital had been absorbed by the excess of organization and current expenses over the scanty receipts of that period. By January 31, 1919, this amount had been made good out of earnings. Under the provision of the Federal farm-loan act that after subscriptions to capital stock by farm-loan associations shall amount to $750,000 in any Federal land bank, one-fourth of all sums thereafter subscribed shall be applied to the payment and retirement of the stock originally subscribed, eight of the banks had, up to November 15, 1919, paid and retired $1,198,890 of the stock originally subscribed by the Government, thereby reducing the amount of stock held by the Government on that date to $7,693,240. Notwithstanding such retirement of stock originally subscribed, the aggregate capital stock of the 12 banks increased from $9,000,000 at the start to $21,321,687 on November 15, 1919.

"Up to October 31, 1919, the net earnings of the 12 banks amounted to $1,278,394.41, of which $202,175 had been carried to reserve account, $332,923.98 distributed in dividends paid by five banks upon stock owned by farm-loan associations and individuals, and $743,295.43 is still carried as undivided profits.

"Another gratifying feature, testifying alike to the security of the loans made, the ability and willingness of the borrowers to make payment, and

the efficiency of the collection machinery of the banks, is the unusually small total of delinquencies. To September 30, 1919, payments due by borrowers to the banks had accrued to the amount of $12,666,313.61. Of this sum, the amount remaining unpaid on that date was only $172,456.72, or 1.4 per cent. of the total. Of that amount $86,816.60 was 30 days or less overdue, $25,182.05 from 30 to 60 days, $14,872.85 from 60 to 90 days, and only $45,585.22 over 90 days overdue. This record has been made notwithstanding widespread disaster to crops in several sections of the country.

"The Federal farm-loan act provides that 'the salaries and expenses of the Federal farm-loan board and the farm loan registrars and examiners * * * shall be paid by the United States.' The system is now so well established and is in such financial condition that this assistance from the Government, in the judgment of the Federal farm loan board, concurred in by officers of the banks, is no longer necessary or desirable. The board accordingly has recommended that beginning with the fiscal year 1921 its expenses be provided for by assessments against the Federal land banks and the joint stock land banks in proportion to their gross assets. Measures for this purpose have been introduced in both houses of the Congress and, should the plan be adopted, the Government will be relieved entirely from the payment of the expenses involved. To have put the system on such a basis in three years is a very gratifying and satisfactory result.

"The primary purpose of the Federal farm-loan system, as expressed in the title of the act creating it, was 'to provide capital for agricultural development.' The accomplishment of that purpose necessarily involved the possibility of an enhancement of farm-land values. In so far as such enhancement was based upon increased production or added attraction to farm life, it was legitimate and desirable. Indeed, there were many sections of the country where, owing either to the exodus of young

men from the farms to industrial pursuits in the towns, or to local and peculiar conditions, farm lands were selling at prices much below their intrinsic value as measured by productive capacity. Any enhancement in land values in these sections which might incidentally result from the operation of the Federal farm-loan system was a general public benefit, as tending to check the urban drift of population and stimulate the local production of foodstuffs. The Federal Farm Loan Board has had in view from the start, however, the importance of guarding the system from complicity in anything approaching speculation in farm lands or such enhancement in their values as would either make them more difficult for men of small means to acquire or add to the overhead cost of producing foodstuffs. The high prices realized by growers for their crops during the war period were naturally reflected in a general increase in land values, but the first indication of any rapid or speculative rise did not manifest itself until a few months ago, when it appeared in some sections of the Middle West. It was claimed, perhaps correctly, in a recent convention of private loaning agencies, that the advances in this section were justified and will be permanent. The Federal Farm Loan Board, however, has thought that in the public interest, and in pursuance of the policy of conservatism which they have always followed, it would be better to follow this movement at a safe distance than to be part of it. They, therefore, issued instructions under date of May 3, 1919, to the banks under their supervision that where sales had taken place within a year at prices materially in excess of previous values such sales were not to be taken into account in the appraisement of the land, and under date of July 7, 1919, that no loans in excess of $100 an acre were to be made on land used for general agricultural purposes, even where the appraisement was $300 or $400 an acre."